

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DEVIN WARREN SIZEMORE,

Defendant.

Case No. 6:21-cr-00138-RAW-1

SECOND MOTION IN LIMINE

Defendant Devin Sizemore, by and through his assigned counsel, and pursuant to Local Criminal Rule 12.1(E), moves this Court for an order precluding any and all reference to a hole located in a tack shed as a grave, burial site, or other related term.

Although the government has not yet informed defense counsel that it intends to refer to the hole located in a tack shed as a grave, burial site, or other related term, Defendant files this motion early out of an abundance of caution to inform the Court that the admissibility of any reference to the hole may be an issue at trial.

This Court should grant this motion because, even if a proper foundation is established and relevant (which the Defendant in no way concedes), referring to the hole as a grave, burial site, or similar label

may unduly appeal to the juror's sympathies and "lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged." *Old Chief v. United States*, 519 U.S. 172, 180 (1997). The probative value of any such evidence would be substantial outweighed by its prejudicial effect under Rule 403 of the Federal Rules of Evidence.

February 21, 2022

Respectfully submitted,

/s/

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Certificate of Electronic Filing and Service

This is to certify that on this 21st day of February, 2022, I caused the foregoing instrument to be filed with the Clerk of the Court using the ECF System for filing, with electronic service to be made via CM/ECF to Rebecca Dunnan, AUSA, and to all counsel of record. To counsel's knowledge, there are no non-ECF registrants who are counsel in this case.

/s/

Lisa A. Peebles
Federal Public Defender